IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

AS.No. 617 of 1994()

OS.261/1991 of PRINCIPAL SUB COURT,PARAVUR
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APPELLANT - PLAINTIFF:

ANGAMALY CHITTY FUND PRIVATE LIMITED, ANGAMALY, KERALA STATE, REPRESENTED BY ITS MANAGING DIRECTOR, T.K. JOSEPH, SON OF KURIAN, RESIDING AT THADATHILL HOUSE, THOTTAKKATTUKARA P.O., ALUVA - 8.

BY ADV. SRI.K.K.JOHN

RESPONDENTS - DEFENDANTS:
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1. **K.D. GEORGE, SON OF DEVASSY, KORATTIKUNNEL HOUSE, KARUKUTTY KARA, KOTHAKULANGARA NORTH VILLAGE, ALUVA TALUK, ERNAKULAM DISTRICT.**

2. **M. JOY VARGHESE, SON OF VARGHESE, MALIYAKKEL HOUSE, THIRUMUDIKUNNU KARA, KORATTI, KIZHAKKUMMURI VILLAGE, MUKUNDAPURAM TALUK, THRISSUR DISTRICT.**

3. **N.C.DEVASSY, SON OF CHACKAPPAN, NEAR NALAKKARA HOUSE, PEECHANIKKAD KARA, KOTHAKULANGARA SOUTH VIOLLAGE, ALUVA TALUK, ERNAKULAM DISTRICT.**

4. **M.V. POULOSE, SON OF VARKEY, MANAVALAN HOUSE, KARUKUTTY KARA, KOTHAKULANGARA NORTH VILLAGE, ALUVA TALUK, ERNAKULAM DISTRICT.**

5. K.J. PAILY, SON OF JOSEPH, KORATTIKUNNEL HOUSE, MALAYATTOOR KARA, MALYATTOOR VILLAGE, ALUVA TALUK, ERNAKULAM DISTRICT.

6. M.P. POULOSE, SON OF POULOSE, MOOTHEDAN HOUSE, KARUKUTTY KARA, KOTHAKULANGARA NORTH VILLAGE, ALUVA TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.K.PRABHAKARAN
SRI.JOHNSON P.JOHN

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 617 OF 1994

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Dated this the 19th day of December, 2007

J U D G M E N T

Plaintiff in O.S. No.261 of 1991 on the file of the Sub Court, North Paravur, is the appellant. Appeal is filed against that part of the decree by which the trial court disallowed the claim of the plaintiff for the amount due under instalments No.15 to 32 in a chitty transaction. Plaintiff is a Chitty Foreman. First respondent was a subscriber to a chitty conducted by the plaintiff. He bid the chitty and executed a chitty bond. Alleging that first respondent defaulted payment due from 15th instalment onwards, this suit was filed. Plaintiff claimed the amount due from 15th instalment upto 50th instalment.

2. First defendant filed a written statement contending that the suit is barred and not maintainable. It was contended that the amount claimed by the plaintiff was excessive. Subsequently, plaintiff amended the suit and first defendant filed an additional written statement also. The trial court found that the claim of the plaintiff for instalments prior to

18.8.1985 was barred and the plaintiff can only claim the amount which fell due after 18.8.1985. Suit was partly decreed. Challenging that part of the decree by which the trial court disallowed the amount due for 15th to 31st instalments, this appeal is filed.

3. Learned counsel appearing for the appellant has strenuously argued before me that the first respondent had executed Exhibit A5 revival letter fully knowing its legal implications and the court below without assigning any valid reason rejected the same. Learned counsel for the contesting respondents has argued that Exhibit A5 revival letter was subsequently fabricated by the appellant to get over the period of limitation.

4. The Chitty terminated on 10.3.1987. According to the appellant demand was made on 16.1.1987 and the cause of action for filing the suit arose only thereafter. Subsequently, appellant filed a petition to amend the plaint, which was allowed. A plea of acknowledgment was incorporated in the plaint. It was contended that the first respondent executed a revival letter on 28.2.1986 in favour of

the plaintiff. First respondent denied the execution of the revival letter.

5. It is pertinent to note that in the plaint there is no averment regarding revival letter. Exhibit A5 is a letter which contain only the disputed signature of the first respondent. Even the name of the first respondent is not written in it. It is also to be noted that none of the sureties to the chitty had signed the revival letters. So they are not liable for any instalment which fell due three years prior to the date of filing of the suit. First respondent gave evidence as D.W.1. He stated that he did not go to the office of the appellant on 28.2.1986 and signed the document. P.W.1 deposed that first respondent came to the office of the appellant on 28.2.1986 and brought amount for one instalment on that day and signed the revival letter. No counter foil of the receipts issued for the receipt of subscription was produced. Even according to the appellant Exhibit A5 was missing and subsequently it was traced out. Trial court also compared the signature contained in Exhibit A5 with that of the first respondent and found that there was dissimilarity.

The court below disbelieved the oral evidence of P.W.1. Trial court gave very valid and cogent reasons for rejecting Exhibit A5. I do not find any reason to take a view different from the one taken by the trial court. Appellant has failed to establish that the signature contained in Exhibit A5 was actually affixed by the first respondent. The finding of the court below that the appellant is not entitled to get the amount due under the instalments prior to 18.8.1985 is perfectly correct and does not call for any interference. Appeal is without any merit and the same is only to be dismissed.

In the result, appeal is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S. NO. 617 OF 1994

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J U D G M E N T

19TH DECEMBER, 2007